

THE TRIAL OF THE WASHINGTON ELECTION RIOTERS.

(FROM SUTTON'S REPORT.)

Tuesday, July 7, 1857.

CRIMINAL COURT FOR THE COUNTY OF
WASHINGTON.

JUDGE CRAWFORD,
Presiding.

PHILIP BARTON KEY, ESQ., U. S. D. A.

COUNCIL FOR THE DEFENCE.

JOSEPH H. BRADLEY, ESQ.,
ROBERT E. SCOTT, ESQ.,
VERFARLAN ELLIS, ESQ.,
JOHN LINTON, ESQ.,
WILLIAM J. MARTIN, ESQ.,
JOSEPH H. BRADLEY, JR., ESQ.,
WILLIAM J. STONE, JR., ESQ.,
DANIEL KATZOFF, ESQ.,
EDWARD CARRINGTON, ESQ.

Argument of Edward C. Carrington, Esq., in
defense of Charles Spencer, charged with riot on
the 1st of June, 1857.

Mr. CARRINGTON. May it please the Court, and you, gentlemen of the jury, I share the disappointment of the crowd that the learned District Attorney is to be immediately succeeded by me, and not by my eminent friend from Virginia, as was generally expected. This was the understanding between the counsel for the defence until about five minutes ago; I therefore appear before you under unfavorable auspices—under the pressure resulting from a sudden and unexpected change, without sufficient time for preparation and arrangement of my views. Besides, as you all know, I have enlisted for the war; I fought the first battle; when I expended a large quantity of my little ammunition, and desired to reserve the balance in my possession for the two which are to follow the one now waging; this fight I shall leave principally to able and more experienced warriors than myself, who have come to lend us their invaluable aid. Indeed, I congratulate myself that my task on the present occasion is comparatively an easy one;—I represent but one of the parties charged in this indictment, and it is in consequence of his earnest request, alone, that I consented to appear in this cause, preferring, as I have already intimated, to reserve myself for those which are to follow, in which I have been retained by a large number of the accused.

Gentlemen of the jury, the memorable 1st of June, 1857, dawned upon us; the affairs of the morning passed in review before our minds as it is reflected by the evidence, without any immediate call upon me for action. The United States military under the command of his Honor the Mayor, make their appearance at the first precinct of the Fourth Ward of Washington city; I gaze upon this extraordinary and unprecedented movement, not without emotion but without interference either by word or deed. They begin their work of death; and within our view American blood flows freely in the streets of this free and happy land;—and this, by the order of the Mayor of a little municipality in the heart of the model republic; in a land of religion and of law; in a Christian age and a Christian community, where, however we may differ by the way, we all, as a people, recognize and worship the Prince of Peace as the only true and living God! I know not how it is with you, gentlemen of the jury, but for one, I contemplate this awful scene with feelings of horror and honest indignation! Poor, unoffending negroes, children, and American citizens of all political parties, are writhing in the last agonies of dissolution! Merciful God! was not this enough?—Ah, no, gentlemen of the jury. Mark the last scene of this sad and terrible tragedy! The Marines raise their guns, and point them obliquely, and discharge a mass of liquid fire into a quiet, unoffending crowd, standing at a point designated in the course of this examination as Allston's corner; and in a moment, the spirits of the amiable and lamented Allston, and others, are stricken and appalled, before the bar of eternal Justice! I feel my blood boil and my bosom heave, and am ready to exclaim, here is the point beyond which endurance ceases to be a virtue.

But I shall forbear, as I promised you, and save it for those to avenge the names of the innocent dead around me. And as for his Honor, the Lord Mayor of Washington city, I am willing to leave him to Heaven and to the thorns that in his bosom lodge to prick and sting him. Now, my worthy friend, the learned District Attorney, seems disposed to treat these sad and solemn scenes lightly; and the feeling manifested by the counsel for the defence, he charges to be a sort of sickly sentimentality. Well, well, we will not quarrel about this; every gentleman is the best judge of his own professional duty, and is at liberty to exercise his own taste freely—"de gustibus non est disputandum."

But I charge upon him very poor taste, to say the least of it, in making the bloody transactions of that unhappy day the subject of ridicule and irony. For, gentlemen of the jury, in surveying this field of carnage and of blood, I behold a sight that touches my heart and moves me irresistibly to action! I see my young friend, Charles Spencer, weltering in his own blood, unpitied and uncared for by these bloody executioners of Magruder's law! Aye, more; I see his mangled and bleeding body dragged before an honest jury of his country, and he charged as a criminal, by a retreating police officer, who handsily deserted the post of duty on that memorable day, and would fain make some statement for his own disgraceful flight, by immolating another victim to the hell-born demon of party spirit. It is then and then only, that I come to shield him, if I can, from further harm—to invoke an impartial and honest jury to protect him from the vengeance of this uncorroborated and contradicted witness, and restore him to the arms of his weeping and widowed mother. I have often said, let me honor to address this jury. My role is familiar to you; and I am sure there is not one of you who will render a verdict of conviction, unless he is satisfied that his duty clearly and imperatively demands it. The District Attorney has invoked you to discard from your minds all political prejudice and party feeling, if perchance, any should linger there. Is it necessary for me to say that I cordially unite in this invocation? When party spirit is permitted to invade the jury-box, you strike a fatal blow at the great palladium of American liberties! I rely now, as I have ever done, upon the juror's oath as a sure and safe refuge for the faithful, honest, and impartial administration of the law.

Gentlemen of the jury, my first proposition is, that the party whom I represent, on the present occasion, had no connexion—no criminal connexion with the affair referred to in this indictment, by whatever technical name you think proper to designate it (affray, riot or unlawful assembly), unless you are prepared to show such a connexion from the fact that he was present upon the ground during the last disturbance on that day, and received a dangerous wound from the fire of the Marines, which nearly caused his death. The only evidence against him is the testimony of this lynx-eyed, skulking, dastardly, police officer, who, it seems, is blessed with optics so keen, as to see the things that are not seen, and who took the precaution to act upon the intimation of the poet—

"He who fights and runs away,
Will live to fight another day."

What is the testimony of officer Franklin Birkhead, Esq.? Substantially, as follows: "I saw a crowd of some eight or ten persons suddenly rush from Allston's corner, fire a pistol, and throw stones at the Marines; among them I recognised young Hillary, (who is not upon trial), and heard him say, the damned acquiescents are discharging blank cartridges; and Charles Spencer, whom I distinctly identified as one of the persons throwing stones." To these facts he swears positively,

right up to the hub. Is this statement true, or is it false? The District Attorney says you must, by a verdict of conviction, declare it true, or you brand his witness with the crime of perjury. I had not intended to take this position before this Court and jury; but to argue, that Franklin Birkhead was evidently mistaken with regard to the occurrences which you are sworn to consider, for I am always disposed to place the most charitable construction upon the conduct of others; and if I had been left to consult my own inclinations, I should have endeavored to cover the extraordinary testimony of this discredited witness with the mantle of charity. But since my learned friend has thought proper to make the issue—that his witness is truthful or perjured—I meet it plump; for, gentlemen of the jury, I am not the man to decline a challenge, distinctly and boldly made. It is not my business to shield the character of a witness, which his own counsel has put in jeopardy, by presenting to the jury the dangerous alternative—convict the prisoner, or brand the witness with perjury. I infinitely prefer that you should do the latter. My duty is, to protect my client, whose liberty and good name depend upon my humble efforts; and this I intend to do, so help me Heaven!—fairly and honestly, I trust, but boldly, if I have to crawl over the dead bodies of one hundred infamous and perjured witnesses.

Then, gentlemen of the jury, I accept the challenge of the District Attorney, and take the bold ground, that Franklin Birkhead has deliberately sworn to what he knew at the time to be absolutely and positively false. And to maintain this position, permit me to introduce to you Mr. Noakes, the first witness on the part of the defence, at this stage of the cause. What is his testimony? "I was standing at Allston's corner at the time of the disturbance referred to by the learned District Attorney, and I distinctly saw them level their guns, and fire into the crowd, when quiet and order prevailed around me." I then interrogated him, and he replied to me, as follows: Did you at, or about that time, see a party of some eight or ten persons rush from the corner into the middle of the street, and fire a pistol and cast stones at the Marines? No, sir, I did not. If any such thing had occurred, could you have failed to observe it? No, sir. Why? Because my position was such that I could see a full view of the Marines, and the space intervening between me and them; and if any such thing had occurred I could not have failed to observe it. I saw no such party; I saw no stones thrown, and I heard no pistol fire. Now comes the testimony of Mr. Everett;—not merely honest and intelligent, as his appearance and deportment upon the witness-stand clearly indicated, but evidently a man of great nerve, as was manifested by his bearing upon the first of June last, when he was the deadly fire of the Mayor and his Marines. What does he say? "I was exposed to the whole fire; my view of the Marines was entirely unobstructed. I drew a diagram and made a memorandum of the scenes and occurrences of that day within my observation; I heard the bullets whistle over my head; and when the firing ceased I looked around and saw that I was standing solitary and alone at Allston's corner, save the wounded, dead and dying around me." Here, gentlemen of the jury, is a man for you—a man whose statement you may rely with confidence. None of you will shrink, meekly, run away and hide, as the witness-stand of the witness-stand and timid as birds at the post of duty and danger—mark his testimony. After concluding his narrative, I interrogated him, and he answered as follows: Did you observe a party of some eight or ten persons rush from Allston's corner and fire a pistol and cast stones at the Marines? No, sir, I did not. If any such thing had occurred immediately previous to the firing of the Marines at Allston's corner, could you have failed to observe it? Certainly not. Why? Because as I have already explained, my attention was directed to the Marines at that time, and my view was unobstructed, and if any such thing had occurred I could not, certainly, have failed to observe it. Next follows the testimony of Mr. Ashton White, a gentleman personally known to many, if not to all of you—a gentleman of the highest intelligence and respectability—you heard his statement. I deem it necessary for me to repeat it now, suffice it for me to say, that it fully corroborates the testimony of the two preceding witnesses.

How stands the case now? Three to one—three for the defence and one for the prosecution; three gentlemen of substance and character, of conceded credit and respectability, against a swift-footed policeman, who had dishonored his calling and brought shame and disgrace upon the conservators of the public peace in Washington city.

But how does the District Attorney endeavor to relieve Charles Spencer from the imputation of mistake or wilful perjury, and thereby avert the conviction of his client? First, he brings to the aid of his assistance—Captain Goddard and Patrick Kearney; he maintains that the testimony of these two witnesses corroborates the statement made by Birkhead. Let us see. According to Mr. Key's recollection of the evidence, Captain Goddard testified that pistols were fired and stones were thrown from Allston's corner, thereby confirming to a certain extent the statement made by Birkhead. I deny that Captain Goddard said any such thing. According to my recollection of the evidence, (and my memory is very tenacious of facts), Captain Goddard said that after the Marines had charged upon the cannon and fired upon the crowd in front of the market house, the crowd dispersed in all directions, some towards Allston's corner, firing pistols and throwing stones as they retreated. Now, does the District Attorney mean to maintain that this fire from the Marines upon Allston's corner, and that the crowd which Captain Goddard saw firing from the street to Allston's corner is the same which Birkhead swears he saw rush from Allston's corner into the street? My friend, the learned District Attorney, may contend for this proposition, for it seems that he is willing to maintain any theory, so far as argument can do it, in order to effect a conviction of these parties, however absurd and preposterous. But I apprehend that you, gentlemen of the jury, are prepared to draw an inference from this fact, that it is utterly inconsistent.

But it is now time that I should pay my respects to his last witness, Patrick Kearney. The familiar and euphonious name he bears clearly indicates the land of his nativity. Where was he on the memorable 1st of June? Hear him: "I was in the rear rank, near the left of the column of Marines, enveloped in a cloud of smoke." "What were you doing there, Pat? were you shooting at the people on the streets?" "I was pulling the trigger and loading my musket, but when I fired I did not know what I was doing." "I obeyed orders." And after I got a blow in the face from a brick, I pulled the trigger harder and loaded my musket faster, but whether I fired or not I cannot say. Oh! prudent and immaculate Pat! Now, from this statement, what is the inference drawn by my learned and ingenious friend, the District Attorney? Why, that the brick which struck Pat Kearney in the face is the same stone which the District Attorney swears he saw thrown by Charles Spencer. Gentlemen of the jury, if you will pardon me for speaking technically, this is what I would call a non-sequitur. The conclusion is clear that Birkhead's testimony stands uncorroborated before you, and the issue is between him and the witnesses for the defence in regard to the inquiry to which my remarks are directed. The District Attorney both saw and felt this, or why did he endeavor to destroy the evidence upon which I rely, and to which I have first adverted? And now was this effort made? He would not for one moment pretend to intimate that such men as Noakes, Everett, and White, had sworn falsely; oh, no; but they were evidently mistaken in regard to the occurrences to which they were testified, as they might very well be upon an exciting occasion like the one referred to in this indictment. Now, gentlemen of the jury, does it not strike you as something very singular that all of my witnesses, in the judgment of the District Attorney, should be mistaken in regard to the matters to which they depose, while his witness must necessarily be correct in their impressions of what occurred on the occasion referred to in the indictment, particularly when the reasons, which he urges to show that my witnesses are mistaken in their views, apply

with equal force to show that his are in the same condition. The opinion of the District Attorney is that my witnesses testify truthfully and honestly, but erroneously, because, for some cause or other, they could not see nor hear what actually did occur; but his witnesses must have seen and heard all that did occur, and cannot be in error; they have, therefore, testified to the truth or committed perjury. I must confess I do not understand the logic that leads to such conclusions. If this theory be correct, no man can defend himself successfully. It will be in vain for him to employ counsel and offer evidence upon evidence to relieve himself from the imputation of guilt—his conviction becomes a forgone conclusion. But the District Attorney to maintain his theory that my witnesses are mistaken, endeavors to show that there is a material discrepancy in their statements. And what is it?

Noakes, he says, swears that the fire of the Marines at Allston's corner came from the extreme right of the column. Everett swears that it came from the centre of the column, and White swears that it came from the extreme left of the column. How, he asks, triumphantly can this discrepancy be reconciled?

And if the witnesses differed so materially in this respect, is it not fair and reasonable to presume that they may be mistaken in regard to the matters to which they depose? I accept this position. In reply, I would beg the defense to make a precise point of the column of Marines from which the fire upon Allston's corner proceeded, is a fact about which the witnesses may very well be in error; if his own witness Patrick Kearney is to be believed, for observe, he testified that when the Marines fired upon Allston's corner, the column was enveloped in smoke, which resulted from the previous firing. Now, the fact that these witnesses differ with regard to the precise points in the column from which this fire proceeded, when we consider the distance between them and the Marines, and the fact that their vision was, to a certain extent, obscured, does not warrant the conclusion that they were mistaken with regard to what occurred, if it occurred at all, in their immediate presence, and according to all the evidence, at or near the very point where they were standing.

But again, gentlemen of the jury, what sort of discrepancy is this, upon which the District Attorney relies to shake your confidence in the testimony of the witnesses for the defence?—a discrepancy in relation to an unimportant and immaterial fact, which so far from weakening the testimony of the witnesses for the defence, according to my apprehension of the rules of evidence tends to strengthen them, and confirm the truth of their statements. In my reading, I have gathered, among others, this rule of evidence—and it is a rule of evidence which conforms with my experience—that a substantial concurrence with circumstantial evidence is a strong evidence of truth. The surest and safest test of truth is the concurrence of the fact that witnesses, who agree in relation to the prominent and important facts of a transaction to which they depose, differ about immaterial matters, so far from affecting the integrity of their statements, is the clearest and strongest evidence of their truth and fairness—for this plain and obvious reason, if they concur in all the particulars of a transaction, the most minute and trivial circumstances—when they differ, the concurrence of the fact that they agree in relation to the important facts of a transaction, is the surest and safest test of truth. The concurrence of the fact that witnesses, who agree in relation to the prominent and important facts of a transaction to which they depose, differ about immaterial matters, so far from affecting the integrity of their statements, is the clearest and strongest evidence of their truth and fairness—for this plain and obvious reason, if they concur in all the particulars of a transaction, the most minute and trivial circumstances—when they differ, the concurrence of the fact that they agree in relation to the important facts of a transaction, is the surest and safest test of truth.

Now, gentlemen of the jury, apply this rule of evidence to the case at bar; and what becomes of the attack so cautiously and ingeniously made by the District Attorney upon the testimony of Noakes, Everett, and White? Is not the integrity of their statements vindicated to the entire satisfaction of every rational and impartial mind? Do they here the District Attorney comes at me again, asserting that I have introduced purely negative testimony in answer to affirmative testimony on the part of the prosecution. And he says that the testimony of one witness who testifies affirmatively, is more reliable than the testimony of any number of witnesses who testify negatively. I concede this to be true, as a legal proposition—it is so unquestionably; but the District Attorney failed to illustrate, (as I think he should have done, if he desired that we should have fair play), the admitted difference which exists between these two kinds of evidence. It is impossible for you, gentlemen of the jury, intelligently to decide the question of fact, whether this is a case of affirmative testimony on the one side, and negative testimony on the other side, until you have a distinct apprehension of the meaning of these terms. The illustration put in the law-books is a plain, simple one, to which I would now invite your attention: Two persons equally credible are sitting in the room at the same time—one says he heard the clock strike; the other says he did not; which of the two would you believe? Common sense tells that we should believe the one who speaks affirmatively, in preference to the one who speaks negatively, because the clock, in all probability, did strike, and not fail to do so. But suppose the latter should say, at the time referred to, my attention was directed to the clock—my eye was steadily fixed upon it, for reasons which he should then proceed to assign, and I know it did not strike—of this I am positive; upon this representation, would not your confidence in the man who speaks affirmatively, be considerably shaken?

Now, carry the illustration a little farther. Suppose some eight or ten persons should say, that at the time referred to, their attention was directed to the clock—their eyes fixed steadily upon it, assigning for its good and sufficient reason, and they were positive that the clock did not strike, as stated—for if it had, they could not possibly have failed to observe it. And suppose they should go further, and say, that at the time referred to, there was great excitement—great noise and confusion all around them. Now I ask, in such a case, to what conclusion would your own common sense bring you? Most assuredly, that the witness, who testifies negatively, was mistaken. This, I humbly submit, is an illustration directly in point; for the common law is nothing more, when properly understood and applied, than common sense.

Gentlemen of the jury, this is not a case of negative affirmative testimony; but more properly a case of positive affirmative testimony. And if this be so, it must be clear to every rational and impartial mind, that the weight of evidence preponderates in favor of my client and against the prosecution. Then, if this were merely a question of dollars and cents, I would be entitled to demand your verdict in my favor; but this is not the case. The grave and momentous question of liberty, character, and all that a man holds dear upon earth, is submitted to your decision. For I imagine it is hardly necessary for me to remind this intelligent jury of that benignant principle of criminal jurisprudence, which belongs to every code in Christendom, and borrowed from the Court of high heaven—"better that ninety-nine guilty persons should escape, than that one innocent should suffer"—that the prisoner is entitled to the benefit of every rational and reasonable doubt—that the question is not, whether he is probably guilty, but is he proven to be so beyond all probability? Apply this principle of law to the case of my client, whose fate is at your disposal—where is the juror, who can place his hand upon his heart and say, under the solemn sanctions of the juror's oath, that he is satisfied, beyond all reasonable doubt, from the evidence in this cause, that Charles Spencer is guilty of the conduct imputed to him by the testimony of Franklin Birkhead?—testimony, I repeat, standing solitary and alone—entirely uncorroborated, unless you are prepared to receive the feeble, and in my judgment, futile attempt to support it by the testimony of Capt. Goddard and Patrick Kearney, to which I have already adverted. But, again; gentlemen of the jury, my client has moved an excellent character—up to the time of this accusation, unquestioned and unquestionable. Business-men of the first intelligence and respectability—such men as Hiram Riddle, Elijah Edmondson, and others, have borne testimony to his good name in this community. But what of this, says the learned District Attorney?—It should, in my judgment,

add to his condemnation. When rowdies, bullies and blackguards, engaged in these disgraceful deeds, it is nothing more than we have a right to expect, but when men of character condescend to assist and encourage them in their deeds of outrage and of blood, their conduct is without palliation or excuse, and their condign punishment is the best atonement that could be possibly made to an outraged and violated law.

Why, gentlemen of the jury, the learned District Attorney has so entirely misinterpreted my object in introducing this evidence, that I assure you I was not by way of appealing to your mercy—not by way of palliating his conduct—I would scorn to do so, and I am thankful necessity does not tempt me to do so; but his good character was proven by way of furnishing another fact tending to show his innocence. For, I affirm it to be a rule of law within the hearing of the Court, and if I am wrong, I am sure that his Honor will set me right—that good character is a fact to be considered by the jury in connection with all the other circumstances in the case, in forming their verdict—a fact, which in a doubtful case, is conclusive of the prisoner's innocence—a fact, which has often come to my assistance in many a desperate criminal cause—a fact, which often appears, when all else would fail, like a seraph of mercy, to unbar the dungeon door and set the captive free!

Then, if the question of Charles Spencer's guilt or innocence of the charge preferred against him in this indictment is a question of fact, I assure you I turn the scale in his favor, and entitles him to a prompt and decided verdict of acquittal. The reason upon which this principle of the common law is founded, is another striking and beautiful illustration of its benignity and wisdom—it is this: That it is competent and proper for the jury to infer in every doubtful case that a man of good character is incapable of the conduct imputed to him. And I beg you, gentlemen of the jury, when you are considering this branch of the prosecution in your retirement, to bear in mind the testimony of the other witnesses for the defence, to the effect, Mr. Southron, Dr. Blood, Dr. Clayton, and Mr. Fenton, equally credible and disinterested. I shall not trouble you with recapitulation of their respective statements, suffice it to say, that they fully corroborate the testimony of Noakes, Everett, and White. But I must be permitted to notice the testimony of young Fenton somewhat in detail, because there is an important and material discrepancy between his narrative and the testimony of Charles Spencer; and if his impression is to be correct, his testimony tends very strongly to prove an alibi in the case of the party whom I represent on the present occasion; he is another of the innocent victims of military law, as it is administered in the city of Washington under the present dynasty. He bears upon his body now the wounds he received from the guns of his own countrymen without cause or provocation. Hear him. His voice is hoarse, as if it were, from the force, for he barely escaped with his life, from the scenes of that bloody day. He was interred at the time and in the following substantially: "I was standing at Allston's corner, where all was quiet and orderly; I saw the Marines fire, and received a bullet; I turned and ran; I stumbled over the dead body of Allston; as I was running I heard another report from the Marines; and at that moment saw a man whom I took to be Charles Spencer, fall; I then asked him this question: 'Do you recognize the young man sitting by me, the person you saw fall near Magruder's corner as you have just stated?' His answer was: 'I will not swear positively, but I am quite sure he is the man.'"

Now, gentlemen of the jury, if Fenton is correct in his impressions—if the man he saw fall near Magruder's corner, as he has stated, was, in point of fact, Charles Spencer, (and of this I have no earthly doubt) two conclusions follow irresistibly. First, that the fire which wounded Spencer was not the same as that which was fired from Allston's corner, as was sworn by Franklin Birkhead. Second, that Charles Spencer was not engaged in front of Allston's corner at the time and in the manner to which Franklin Birkhead has made oath. And yet, in view of these facts, the learned District Attorney has thought proper, in the discharge of his professional duty, to charge Charles Spencer with being the man who drew the fire of the Marines upon Allston's corner, and thereby the murderer of Allston.

Gentlemen of the jury, is this not adding insult to injury? Was it not enough to shoot him almost to death with American guns upon a public square—was it not enough to expose him to the public arrest—drag him from the desolate hearthstone of his widowed mother, whose cheeks are scarred by the tears shed upon the newly made grave of her husband—charge him before an honest jury of his country with being a violator of the law and a disturber of the public peace? Great God! was not this enough? No, gentlemen of the jury, it seems that the learned District Attorney in his zeal and ardor to effect a conviction, must lend his aid to the prosecution. He says, that the testimony of Franklin Birkhead is strictly true, my client is not guilty as indicted; and, therefore, however guilty he may be in your estimation of improper conduct on the occasion referred to, he is, by law, entitled to your verdict of acquittal, and will obtain it, for I apprehend this jury cannot be persuaded to transcend the limits of the law to convict, although they might be induced to strain it a little in order to acquit—that if you err at all, you will prefer to err upon the side of mercy, that will afford you the most sincere pleasure to rescue this young man to his family and his home, whatever his errors may have been, if you can do so consistently with your sworn and solemn duty as jurors. I remember arguing a case before you not long ago, where the party was charged with larceny, and in defending him I succeeded in proving that he was not guilty of stealing, but of receiving stolen goods; the jury evidently considered this a technical distinction, and rendered a verdict of conviction. Why? Because the law was clear; yet he was acquitted. Why? Because the jury were convinced by the allegations in the indictment, and were compelled upon their oaths to say that he was not guilty as indicted. You will observe that the indictment in the present case contains but one count, and that is a count charging the parties on trial with a riot on the first of June, 1857. Now, unless you are satisfied with the evidence in this cause, beyond all rational and reasonable doubt, that Charles Spencer's participation in the indictment renders him guilty of a riot in legal contemplation, he is entitled by law to your verdict of acquittal, whatever other offence, in your estimation, he may have committed upon the occasion of the alleged disturbance. Then what is a riot? You know quite as well as I do; the law upon this subject has been so frequently discussed and illustrated within your hearing that I imagine it is as familiar to you as your A, B, C. Observe, however, that whether a certain state of facts amounts to a riot, is a question of law to be decided by his Honor, but whether the state of facts, which his Honor declares is necessary to constitute a riot, exists in the case at bar, it is your province, and solely your province, to determine. Now, my proposition is, that the evidence introduced on the part of the prosecution against Charles Spencer, if true, does not prove him guilty of a riot in legal contemplation.

Here, it seems to me, I might safely rest my case. But I esteem it the duty of an advocate to make every point of defence that his cause will admit, and he fails to do this, he may properly be charged with the crime of omission.

Then, gentlemen of the jury, my next proposition is, that upon the hypothesis that the testimony of Franklin Birkhead is strictly true, my client is not guilty as indicted; and, therefore, however guilty he may be in your estimation of improper conduct on the occasion referred to, he is, by law, entitled to your verdict of acquittal, and will obtain it, for I apprehend this jury cannot be persuaded to transcend the limits of the law to convict, although they might be induced to strain it a little in order to acquit—that if you err at all, you will prefer to err upon the side of mercy, that will afford you the most sincere pleasure to rescue this young man to his family and his home, whatever his errors may have been, if you can do so consistently with your sworn and solemn duty as jurors. I remember arguing a case before you not long ago, where the party was charged with larceny, and in defending him I succeeded in proving that he was not guilty of stealing, but of receiving stolen goods; the jury evidently considered this a technical distinction, and rendered a verdict of conviction. Why? Because the law was clear; yet he was acquitted. Why? Because the jury were convinced by the allegations in the indictment, and were compelled upon their oaths to say that he was not guilty as indicted. You will observe that the indictment in the present case contains but one count, and that is a count charging the parties on trial with a riot on the first of June, 1857. Now, unless you are satisfied with the evidence in this cause, beyond all rational and reasonable doubt, that Charles Spencer's participation in the indictment renders him guilty of a riot in legal contemplation, he is entitled by law to your verdict of acquittal, whatever other offence, in your estimation, he may have committed upon the occasion of the alleged disturbance. Then what is a riot? You know quite as well as I do; the law upon this subject has been so frequently discussed and illustrated within your hearing that I imagine it is as familiar to you as your A, B, C. Observe, however, that whether a certain state of facts amounts to a riot, is a question of law to be decided by his Honor, but whether the state of facts, which his Honor declares is necessary to constitute a riot, exists in the case at bar, it is your province, and solely your province, to determine. Now, my proposition is, that the evidence introduced on the part of the prosecution against Charles Spencer, if true, does not prove him guilty of a riot in legal contemplation.

A riot is defined to be "a tumultuous disturbance of the public peace, by three persons or more, assembling together for the purpose of committing an offence, or of assisting one another against any who shall oppose them in the execution of the same private object, and afterwards executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended is lawful or unlawful."

Gentlemen of the jury, observe, if you please, the elements necessary to constitute this offence: First, a concert of action between three or more persons; second, for the execution of some private

object; and third, the actual execution of the same in a violent and turbulent manner, to the terror and consternation of the people, or as it has been decided by this Court, an attempt to execute the same in a violent and turbulent manner, &c. Now, I say, the evidence on the part of the prosecution does not present a case of riot as above defined, so far as Charles Spencer is concerned, but, if true, proves him to be guilty of another and totally different offence, not charged in this indictment, to wit, an affray. An affray is defined to be a sudden and mutual fighting of two or more persons in some public place, to the terror of the citizens. You will observe the principal distinction between these two misdemeanors, which I shall now endeavor fairly and clearly to illustrate. First, a riot implies concert of action, either by previous arrangement or immediate agreement at the time of the disturbance; while an affray is a contest resulting from sudden ebullition of feeling, and not from premeditation or agreement, either remote or immediate. Second, a riot implies mutual agreement to execute some common private purpose; whereas an affray is the result of passion—sudden excitement—indulged in by the parties without reflection and without any design to accomplish some ulterior private purpose. Now, gentlemen of the jury, apply the evidence in this cause on the part of the prosecution, so far as it affects the party represented by me, to the law pertaining to the indictment, as I have endeavored to expound it, and I assure you, I hope, fairly and distinctly, and then say, if you can, that you are satisfied, beyond all rational and reasonable doubt, that Charles Spencer is guilty of a riot as indicted. What is the whole theory of the prosecution? Simply this: that certain Plug Uglies came from Baltimore to this city on the first of June, 1857, and were joined by certain lawless citizens of Washington, for the purpose of preventing our naturalized citizens from exercising their elective franchise. Now, pass this whole cause in review before your minds, and point to the evidence, if you can, that implicates or tends to implicate Charles Spencer, in a conspiracy with the persons referred to, in any such conspiracy ever existed, to hinder or molest any class of our fellow-citizens in the free and full exercise of their legal and constitutional rights—the sacred privilege of voting for the man and party of their choice, guaranteed to them by the Constitution and laws of the country. It is true, Birkhead did say that Charles Spencer was seen by the Plug Uglies several times on the first of June; but upon cross-examination, he admits that he never saw him acting in concert with them during any of the disturbances to which the various witnesses have deposed during this investigation. Now, are you prepared, in view of this evidence, to say, that you are satisfied, beyond all rational and reasonable doubt, that Charles Spencer was acting in concert with this party in the execution of the conspiracy, to wit, to hinder or molest any class of the citizens of the United States in the exercise of their legal and constitutional rights? Surely not. Then my client is not guilty of a riot as indicted; but, if guilty at all—which I deny and have endeavored to disprove—guilty of an affray; and I, therefore, upon this ground, also claim a verdict of acquittal at your hands. I have no sympathy with the Plug Uglies. I am a law-loving and law-abiding man. I desire to see all violators of the law properly and speedily punished. I am no advocate of anarchy and mobocracy of wrongs, outrage, and oppression, come from whatever quarter it may. My vision is not so jaundiced by party prejudice or party attachments, as not to see, admit and approve, the errors of my party and even of my personal friends; but let us take care, one and all, that we segregate and punish the breakers, and the breakers only, of the law. There are many other deep, interesting and important questions involved in this case, which are submitted to you for your consideration.

First, The legal and constitutional authority of the President of these United States, to call upon the military arm of the Government to suppress a riot? Second, His legal and constitutional authority to do so, in view of the facts and circumstances of this particular case? Third, The legal consequences resulting from the course pursued by his Honor, the Mayor of Washington city, in the execution of this extraordinary power conferred upon him by the President of the United States? These are questions, however, as I conceive, foreign to the issue, to which my efforts, in the discharge of this professional duty, should be directed. Whatever view you may take of them, they cannot affect the interests of my client, as stake in this prosecution. I, therefore, leave their discussion and elucidation to the gentlemen who are to succeed me, to whom this duty more properly belongs, as the defendants, whom they represent, and, to some extent, interested in their proper solution.

The District Attorney referred to the Louisville riots, and to other similar disturbances in the various large cities of the United States. It is time, he thinks, that the strong arm of the law should be raised to strike down these ruthless invaders of the public peace. Why this allusion made? Why this appeal to the jury? Was it not an attempt, on my part, to inflame your passions and excite your prejudices against the defendants in this indictment? For what purpose was this course pursued? Is not the public mind sufficiently excited already? I warn you, gentlemen of the jury, against these inflammatory appeals. Take care that in your anxiety to furnish, by the punishment of these parties, a bright example to the violators of the law, you do not strike down innocent and unoffending men. Take care, that in following the example of his Honor, the Mayor of Washington city, you do not meet with a similar fate, and stain your hands and hearts with innocent blood, and kindle in your bosoms the fire of an undying remorse. Take care, I say, that in your zeal to stamp the seal of your public disapprobation upon this sort of conduct, you do not like him, hand yourselves over to public scorn and reprobation. Why have I consumed so much of your time in the defence of my client? Under ordinary circumstances I should have submitted his case without a word of argument. But I have the satisfaction of having been feeling too well to adopt this course. I know human nature well enough to know that in times of excitement reason and judgment are dethroned, and passion and prejudice usurp the sway over the minds of men, and that under such circumstances to accuse is often to condemn.

But, in this hour of desolation and distress, the unhappy prisoner has a sure and steady hope. The jury-box appears before him like the "shadow of a great rock in a weary land;" there he finds a refuge from the storm and a covert from the fire of the storm—a safe retreat, where no rude wind of prejudice can assail or disturb him. I charge you, gentlemen of the jury, to preserve it sacred and inviolate.

I am done. I leave my client in your hands; deal with him, as I know you will do, fairly, charitably, and honestly, as the law and the evidence demand. And I anticipate your verdict with joy and gladness; for, if you will pardon a slight paraphrase of the good old Democratic doctrine, "I have an abiding confidence in the discriminating virtue, intelligence, and patriotism of an American jury."

MONEY HOARDERS.—According to the Treasury estimate, there are in this country about \$250,000,000 in gold, of which little more than a fifth is in the banks—leaving little short of \$200,000,000 to be found elsewhere. The Treasury hoards very commonly from twenty to twenty-five millions, leaving probably \$175,000,000 to be sought among the people. Allowing \$50,000,000—a liberal estimate—to be in actual use, there remains \$125,000,000 which is hoarded by the people, and to an extent six times exceeding the Treasury.

KANSAS AND SLAVERY.—The Columbia South Carolinian refuses to join in the assault upon Gov. Walker for his Kansas policy. It candidly admits that the attempt to make Kansas a slave State is a failure, and for the reason that Providence has interposed an objection. The South fighting for Kansas; it was like fighting against the winds of heaven and the power of the elements. Climate settles the question better than the politicians.

The lady whose sleep was broken has had it mended.

Correspondence of the American.
WASHINGTON, Aug. 17, 1857.

Position Defined. I was asked, not long since, if I was not afraid to write so boldly, and it was intimated that I might be arrested for my unparading use of the quill, or rather the steeple. I prefer a steeple, because there's a little in it. Fear is a word unknown to the vocabulary of American chivalry; consequently, they may, as soon as they please, arrest me for exercising a freeman's privilege in the public expression of my opinions; and, indeed, if it had not the appearance of egotism, I would subscribe my full name to the articles which I write, so that I could be easily found by the bloodhounds. Arrest me! For what? Judge Crawford has publicly declared in open Court—ay, at a time when he was in the full discharge of his legal functions, and surrounded by all the pomp and circumstance of law, that foreigners—here I am a-ne how, d'ye mind?—to dar tyvil mit dar peebles names, and dar vrows—vat is de expression vat you sa, ah?—gang to the dell w'it y'e, mon! weel, weel, vara true, vara,—that such people have a right to come to this country and drive native-born citizens from the polls on the days of election. This is reason, because it strikes at the very foundation of our republican institutions; and yet this wise and upright Judge, this Daniel—no, not Daniel, for he was a good man, and loved his country—this modern Draco—ay, that's the name, sit securely on his bench (oh! that it were his stool of repentance!) and peeps, as of yore, over his spectacles in all the bitterness of wormwood. Why, then, should I fear an arrest, when I speak and write for my country's good, and for that alone?

I am an American! Through my veins flows the blood of those who, in the Revolutionary struggle, did the state some service; and I would empty every artery of my body ere I relinquished that right which the Constitution allows to every free, white male citizen of the United States. What!—am I to tremble at the nod and blink of the Executive, (which peculiar operations by-the-by are performed without much exertion by that distinguished functionary,) or break away from the hyena-like grin of the obese bawler who sucks the municipal tit, and who, like a spoiled child, is permitted to play with real sin-pur-pur, bona fide, de facto, and no mistake, soldiers—bully marines, with big guns on their shoulders and long wounds by their sides, on election days, to the annoyance and even death of peaceable citizens? I answer, no, I do not live in Russia, France, Spain, nor England: I am an American citizen, and as such, I will "boldly speak and write, though proud oppression will not hear me." Let them come on, then—marines and all, and they will find that the great American eagle is stronger than the Nemean lion, for it yet bears a nation of freemen. Let them come, even like the great army of imperial Xerxes; they will find a Thermopylae and Spartans to defend it, and if we must fall, we will all die together, and fill one common grave.

In my next philippic, I will have the honor, the race and distinguished honor, most humbly and devoutly, to lay my poor respects, like a nevetting pilgrim, at the shrine of the priesthood, earnestly begging, as a worm of the dust, their holy reverences to forgive and absolve me. Ateen! J. L.

CARD.

THE UNDERSIGNED HAVE THIS DAY (Aug. 17, 1857) entered into partnership in the House of Carpenters and Joiners business, and having erected a new and commodious shop in the rear of JACKSON HALL, between Third and Fourth-and-a-half streets, are prepared to contract for and perform all work in their line of business, either in city or country; with which their friends or the public may favor them, on accommodating terms with promptness and dispatch. They respectfully solicit a share of the public patronage.

GEORGE W. GARRETT & CO.
They have several houses and lots for sale in different parts of the city on accommodating terms.
G. W. GARRETT & CO.
(Intel.)

LAW NOTICE.

THE UNDERSIGNED WILL ATTEND THE Circuit and Criminal Courts